IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 07.04.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice J.A.K.SAMPATHKUMAR

Writ Appeal No.432 of 2006
& WAMP No.922 of 2006

The Divisional Manager,
New India Assurance Co. Ltd.,
Trivandrum Road,
Tirunelveli 627 002. … Appellant/2nd Respondent

vs.

1. A.Sankaralingam

2. The Presiding Officer,
Industrial Tribunal,
Chennai 600 104. .. Respondents(Petitioner and 1st Respondent)

Appeal under Clause 15 of the Letters Patent against the order dated 3.12.2004 made in W.P. No.20757 of 1999, by the learned single Judge (PSDJ).
WP No.20757/99: Petition presented to this Court under Article 226 of the constitution of India to issue a writ of Certiorarified Mandamus calling for the entire records connected with the impugned award in I.D.No.86 of 1993 dated 10.9.1998 passed by the 1st respondent and quash the same and direct the 2nd repondent to reinstate the petitioner in service with backwages with continuity of service and all the attendant benefits.

For Appellant : Mr.P.Sukumar

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J U D G M E N T

P. SATHASIVAM, J.

The above Writ Appeal has been directed against the order of the learned single Judge, dated 3.12.2004, made in W.P. No.20757 of 1999, in and by which, the learned Judge directed the New India Assurance Company Limited, Tirunelveli, to reinstate the writ

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petitioner with backwages. In the same order, in respect of regularisation, the learned Judge has observed that it is for the writ petitioner/workman to make a separate application and the same shall be considered by the Insurance Company on merits.

2. Learned counsel for the appellant/Insurance Company would submit that the first respondent herein/writ petitioner was appointed only on ad-hoc basis and the nature of work is to sweep and clean the office and that, at no point of time, he worked for the whole day.

3. When his services were terminated, the workman approached the Industrial Tribunal by filing I.D. No.86 of 1993. By order dated 10.09.1998, the Industrial Tribunal, misconstruing the claim of the workman, dismissed his claim. Questioning the same, the workman filed W.P. No.20757 of 1999 before this Court. The learned single Judge, after finding that the Industrial Tribunal did not consider the claim of the workman in a proper perspective; and on verification of the evidence of the workman as well as the Management; came to the conclusion that the workman had made out a case for employment and directed the Insurance Company to reinstate him with backwages. The question of regularisation was left out to be decided by a separate proceeding.

4. We verified the order passed by the Industrial Tribunal as well as the reasoning given by the learned single Judge in issuing direction to the Insurance Company. Though it is claimed that the workman concerned was only an ad-hoc employee, it is clear from the evidence of MW-1, who was examined on the side of the Insurance Company, that they have not produced any record to show that the workman was only an ad-hoc employee. The learned Judge also referred to the averments in the counter statement, filed by the Insurance Company before the Industrial Tribunal, to the effect that they did not challenge the workman's claim that he worked from morning till evening. The learned Judge, only after consideration of the entire materials, more particularly with reference to the statement of W.W.1, the Workman, and the evidence of M.W.1, examined on the side of the Management, came to the conclusion that the workman is entitled to employment with the appellant/Insurance company. Considering the materials placed, we are in entire agreement with the conclusion arrived at by the learned Judge. Further, as rightly observed by the learned Judge, if the workman makes an application for regularisation, the Management is free to highlight their stand including availability/continuance of work in their Concern.

5. In these circumstances, we do not find any error or infirmity or valid ground for interference. Writ Appeal fails and the same is dismissed. Connected Miscellaneous Petition is also

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dismissed. For compliance of the order of the learned single Judge, dated 03.12.2004, the appellant/Insurance Company is granted two weeks' time from the date of receipt of copy of this order.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

JI.

To

1.The Presiding Officer, Industrial Tribunal, Chennai 600 104.

2.The Divisional Manager,
New India Assurance Company Ltd.,
Trivandrum Road, Tirunelveli 627 002.

+1cc to Mr.P.Sukumar, Advocate Sr 17528

MAB (CO)
km/12.4.

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